

Message Text

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CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-10

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EUR/WE - MR. BEIGEL
EUR/WE - MR. SHEINBAUM

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TO AMEMBASSY BONN
AMEMBASSY THE HAGUE
AMEMBASSY PARIS
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E.O. 11652: N/A
TAGS: UNGA, PINS
SUBJECT: UNGA -- LEGAL COMMITTEE -- CONVENTION ON PROTEC-
TION OF DIPLOMATS
REF: (A) USUN 3609 (NOTAL); (B) USUN 3610 (NOTAL)

1. THE FOLLOWING IS ADDITIONAL BACKGROUND WHICH EMBASSIES
MAY FIND USEFUL IN MAKING APPROACHES RECOMMENDED IN REFTELS.

2. KEY PROVISIONS OF ILC DRAFT CONVENTION ARE CONTAINED
IN ARTICLES 1, 2 AND 6 WHICH ARE AS FOLLOWS:

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BEGIN QUOTE. ARTICLE 1.

FOR THE PURPOSES OF THE PRESENT ARTICLES:

1. "INTERNATIONALLY PROTECTED PERSON" MEANS:

(A) A HEAD OF STATE OR A HEAD OF GOVERNMENT, WHENEVER HE IS IN A FOREIGN STATE, AS WELL AS MEMBERS OF HIS FAMILY WHO ACCOMPANY HIM;

(B) ANY OFFICIAL OF EITHER A STATE OR AN INTERNATIONAL ORGANIZATION WHO IS ENTITLED, PURSUANT TO GENERAL INTERNATIONAL LAW OR AN INTERNATIONAL AGREEMENT, TO SPECIAL PROTECTION FOR OR BECAUSE OF THE PERFORMANCE OF FUNCTIONS ON BEHALF OF HIS STATE OR INTERNATIONAL ORGANIZATION, AS WELL AS MEMBERS OF HIS FAMILY WHO ARE LIKEWISE ENTITLED TO SPECIAL PROTECTION.

2. "ALLEGED OFFENDER MEANS A PERSON AS TO WHOM THERE ARE GROUNDS TO BELIEVE THAT HE HAS COMMITTED ONE OR MORE OF THE CRIMES SET FORTH IN ARTICLE 2.

3. "INTERNATIONAL ORGANIZATION" MEANS AN INTERGOVERNMENTAL ORGANIZATION.

ARTICLE 2.

1. THE INTENTIONAL COMMISSION, REGARDLESS OF MOTIVE, OF:

(A) A VIOLENT ATTACK UPON THE PERSON OR LIBERTY OF AN INTERNATIONALLY PROTECTED PERSON;

(B) A VIOLENT ATTACK UPON THE OFFICIAL PREMISES OR THE PRIVATE ACCOMMODATION OF AN INTERNATIONALLY PROTECTED PERSON LIKELY TO ENDANGER HIS PERSON OR LIBERTY;

(C) A THREAT TO COMMIT ANY SUCH ATTACK;

(D) AN ATTEMPT TO COMMIT ANY SUCH ATTACK; AND LIMITED OFFICIAL USE

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(E) PARTICIPATION AS AN ACCOMPLICE IN ANY SUCH ATTACK SHALL BE MADE BY EACH STATE PARTY A CRIME UNDER ITS INTERNAL LAW, WHETHER THE COMMISSION OF THE CRIME OCCURS WITHIN OR OUTSIDE OF ITS TERRITORY.

2. EACH STATE PARTY SHALL MAKE THESE CRIMES PUNISHABLE BY SEVERE PENALTIES WHICH TAKE INTO ACCOUNT THE

AGGRAVATED NATURE OF THE OFFENSE.

3. EACH STATE PARTY SHALL TAKE SUCH MEASURES AS MAY BE NECESSARY TO ESTABLISH ITS JURISDICTION OVER THESE CRIMES.

ARTICLE 6.

THE STATE IN WHOSE TERRITORY THE ALLEGED OFFENDER IS PRESENT SHALL, IF IT DOES NOT EXTRADITE HIM, SUBMIT, WITHOUT EXCEPTION WHATSOEVER AND WITHOUT UNDUE DELAY, THE CASE TO ITS COMPETENT AUTHORITIES FOR THE PURPOSE OF PROSECUTION, THROUGH PROCEEDINGS IN ACCORDANCE WITH THE LAWS OF THAT STATE. UNQUOTE.

3. POINT HAS BEEN MADE BY A NUMBER OF REPS IN NEW YORK AND ELSEWHERE THAT CONVENTION AS PRESENTLY DRAFTED WOULD EXTEND TO ALL VIOLENT CRIMES WHICH HAPPEN TO INVOLVE DIPLOMATS (E.G. ATTACK IN COURSE OF ARMED ROBBERY OR "CRIME OF PASSION"). MANY HAVE ARGUED THAT CONVENTION NEEDS TO BE NARROWED TO EXCLUDE THESE CRIMES AND COVER ONLY THOSE VIOLENT ATTACKS OBJECTIVE OF WHICH IS TO INFLUENCE OR COERCE GOVERNMENTS.

4. WHILE LATTER CATEGORY IS, OF COURSE, REAL TARGET OF CONVENTION, WE HAVE STRONGLY RESISTED ANY NARROWING OF THE SCOPE BY AMENDMENTS WHICH WOULD LIMIT COVERAGE TO CRIMES CARRIED OUT WITH SPECIFIED MOTIVES, OR EVEN TO CRIMES CARRIED OUT "BECAUSE OF" DIPLOMAT'S OFFICIAL STATUS. WE HAVE, ON THE OTHER HAND, EXPRESSED WILLINGNESS TO TRY TO MEET CONCERNS OF OTHERS BY LIMITING COVERAGE TO SITUATIONS LIMITED OFFICIAL USE

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IN WHICH INDIVIDUAL CARRYING OUT ATTACK "KNEW OR HAD REASON TO KNOW" OF OFFICIAL STATUS OF VICTIM.

5. WE ARE CONCERNED ABOUT INTRODUCTION OF REQUIREMENT OF SPECIFIED "MOTIVE" INTO CONVENTION FOR TWO BASIC REASONS: (A) WE BELIEVE IT WOULD SERIOUSLY UNDERMINE EFFECTIVENESS OF CONVENTION BY CREATING DIFFICULT PROBLEM OF PROOF OF SUBJECTIVE ELEMENT OF MOTIVATION AND BY PROVIDING EASY EXCUSE FOR FAILURE TO COMPLY WITH EXTRADITE-OR-PROSECUTE OBLIGATION IN ARTICLE 6; AND (B) ONCE QUESTION OF MOTIVATION WERE RAISED AS ELEMENT OF DEFINITION OF CONVENTION'S COVERAGE, IT SEEMS VERY UNLIKELY THAT AFRICANS AND OTHERS WOULD BE ABLE TO RESIST TEMPTATION TO SEEK TO EXCLUDE FROM COVERAGE THOSE ACTS CARRIED OUT IN SUPPORT OF CAUSE OF NATIONAL LIBERATION, AND RESULTING POLITICIZATION OF

WORK ON CONVENTION COULD BE EXPECTED COMPLETELY TO DESTROY ANY PROSPECT FOR ITS SUCCESS.

6. WE BELIEVE YOU MAY FIND IT USEFUL IN YOUR DISCUSSIONS ON THIS SUBJECT TO STRESS OUR VIEW THAT ANY OVER-BREADTH IN CONVENTION'S COVERAGE -- I.E., EXTENSION TO "ORDINARY" CRIMES OF VIOLENCE AGAINST DIPLOMATS -- NOT ONLY SEEMS NECESSARY FOR EFFECTIVE OPERATION OF CONVENTION BUT DOES NOT SEEM TO CREATE PRACTICAL PROBLEM, SINCE THERE WOULD PRESUMABLY BE NO DIFFICULTY IN COMPLYING WITH EXTRADITE-OR-PROSECUTE OBLIGATION IN ANY CASE INVOLVING GARDEN VARIETY CRIME OF VIOLENCE. DIFFICULTY HERE APPEARS TO BE CONCEPTUAL PROBLEM RESULTING FROM FACT THAT CONVENTION WOULD COVER MORE CASES THAN THOSE AT WHICH IT IS REALLY DIRECTED. WE BELIEVE IT WOULD BE MOST UNFORTUNATE FOR THIS KIND OF JURIDICAL HANGUP TO CREATE SERIOUS PROBLEMS IN DEVELOPMENT AND APPROVAL OF EFFECTIVE CONVENTION.

7. DEPARTMENT WOULD LIKE TO HAVE FOREGOING POINTS AND THOSE CONVEYED REFTELS MADE AT HIGHEST LEVEL AT WHICH THEY WOULD BE USEFUL. PORTER

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